TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 259.

GEORGE A. BARTLETT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 16, 1904.

(19,357.)

(19,357.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 2, 1904.

1 In the Court of Claims.

GEORGE A. BARTLETT
vs.
THE UNITED STATES. } No. 23009.

I.—*Petition. Filed October* 16, 1902.

To the honorable the Chief Justice and associate judges of the Court of Claims:

The petitioner, George A. Bartlett, respectfully represents that he is a citizen of the United States and a resident of the city of Washington in the District of Columbia.

II.

Petitioner further represents that heretofore, to wit, on the 27th day of November, A. D. 1891, he was appointed by the Secretary of the Treasury, under the authority of section 3658 of the Revised Statutes of the United States, a disbursing agent for such funds as might be advanced to him from time to time on account of the appropriation for post office, Washington, D. C.; that there was no collector at the place of the location of said post office in the city of Washington in the District of Columbia; that a copy of his said appointment is hereto attached, marked Exhibit A and is prayed to be read and considered a part of this petition; that by the terms of his said appointment he was informed that he would be entitled to such compensation for the services named as is provided by law and that the same rate of compensation would be allowed to him on all amounts disbursed since October 15, 1891, on account of the
2 appropriation named and that he accepted the said appointment and disbursed the funds advanced to him from time to time on account of the said appropriation made by the Congress of the United States amounting in the aggregate to the sum of two millions four hundred and fifty thousand seven hundred and ten dollars and ten cents ($2,450,710.10), between the 15th day of October, 1891, and the 30th day of April, 1900.

III.

Petitioner further says that he rendered monthly statements of his disbursements and retained in his hands from month to month during the time of the performance of the duties imposed upon him by said appointment and its acceptance, from the 15th day of October, A. D. 1901, up to September 1, 1899, a sufficient sum of money to pay to him, the petitioner, such compensation as he deemed himself entitled to under the law in accordance with the terms of his said appointment; that after September 1, 1899, vouchers and

accounts were presented to petitioner for payment on account of said appropriation, and he was directed to pay the same by superior authority; that he had no funds out of which payment of such accounts and vouchers could be made except the money which he believed rightfully belonged to him for and on account of his compensation, but he refrained from applying the funds thus in his hands to his compensation and disbursed the same under and in accordance with his instructions. And petitioner further says that when he had disbursed all the funds which from time to time came into his hands on account of the named appropriation, on or about the 8th day of May, A. D. 1900, he presented to the accounting officers of the Treasury a demand for compensation for and on account of the services herein set forth, which demand was denied by settlement No. 26,637, dated October 5, 1900; that thereafter
3 he presented his said claim for revision by the said accounting officers of the Treasury, and the same was again denied under the authority of a decision of the Comptroller of the Treasury dated June 30, 1902.

IV.

Petitioner further states that he claims compensation for and on account of his services herein set forth at the rate of three-eighths of one per centum of the money disbursed, that is to say on the sum of two millions four hundred and fifty thousand seven hundred and ten dollars and ten cents ($2,450,710.10), amounting to the sum of nine thousand one hundred and ninety dollars and twenty cents ($9,190.20); that petitioner is the sole owner of said claim upon which this action is based; that he has not transferred or assigned any part thereof or any interest therein, and that no person other than petitioner is interested therein, and that petitioner is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets.

Wherefore petitioner prays judgment in the sum of nine thousand one hundred and ninety dollars and twenty cents, ($9,190.20).

GEO. A. BARTLETT.

J. M. VALE,
Attorney for Petitioner.

DISTRICT OF COLUMBIA, ss:

I, George A. Bartlett, being duly sworn, do state on oath, that I am the claimant in the foregoing petition by me subscribed, and that the matters and things set forth in said petition are true as I verily believe.

GEO. A. BARTLETT.

Subscribed and sworn to before me this 19th day of Sept., 1902.

ALBERT C. FLOYD,
Notary Public.

[SEAL.]

EXHIBIT A.

OFFICE OF THE SECRETARY, G.
WASHINGTON, D. C., *November* 27, 1891.

Mr. George A. Bartlett, disbursing clerk, Treasury Department, Washington, D. C.

SIR: You are hereby appointed disbursing agent for such funds as may be advanced to you from time to time, on account of the appropriation for post office, Washington, D. C.

You will be entitled to such compensation, for the services named, as is provided by law, and the same rate of compensation will be allowed on all amounts disbursed by you, since October 15th, 1891, on account of the appropriation named.

Disbursements will be made upon vouchers, issued and properly certified by Thomas C. Steward, superintendent of construction, post office, Washington, D. C.

Respectfully yours, O. L. SPAULDING,
Acting Secretary.

M., Mch., Edbrooke. R. D. M., N.

4 II.—*Traverse. Filed March* 2, 1904.

In the Court of Claims of the United States, December Term, A. D. 1903.

GEORGE A. BARTLETT
vs.
THE UNITED STATES. } No. 23009.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General.
W.

III.—*Argument and Submission of Case.*

This cause was argued on the 2nd and 3d days of March 1904 and submitted.

5 IV.—*Findings of Fact and Conclusion of Law. Filed March 21, 1904.*

This case having been heard before the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimant is a citizen of the United States.

II.

While holding the office of disbursing clerk of the Treasury Department, for which he had given bond and taken the oath of office, as required by law, the Secretary of the Treasury, on the date named below, addressed to the claimant the following communication:

"OFFICE OF THE SECRETARY,
"WASHINGTON, D. C., *November* 27, 1891.

"George A. Bartlett, disbursing clerk, Treasury Department, Washington, D. C.

"SIR: You are hereby appointed disbursing agent for such funds as may be advanced to you from time to time on account of the appropriation for post-office, Washington, D. C.

"You will be entitled to such compensation for the services named as is provided by law, and the same rate of compensation will be allowed on all amounts disbursed by you since October 15, 1891, on account of the appropriation named.

"Disbursements will be made upon vouchers issued and properly certified by Thomas C. Steward, superintendent of construction, post-office, Washington, D. C.

"Respectfully, yours, O. L. SPAULDING,
"*Acting Secretary.*"

For the performance of the duties therein specified the claimant was not required to give additional bond or take any other oath of office.

III.

In accordance with the requirements of the communication aforesaid the claimant, from October 15, 1891, to April 4, 1900, disbursed, of the money passed to his credit on requisition in the Treasury Department therefor, the sum of $2,450,710.10 in connection with the construction of the post-office building in the city of Washing-

ton, upon which he claims as reasonably worth three-eighths of 1 per centum upon the sum so disbursed.

Conclusion of Law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is not entitled to recover, and his petition is therefore dismissed.

6 V.—*Opinion of the Court and Concurrent Opinion.*

PEELLE, J., delivered the opinion of the court:

While the claimant herein was holding the office of disbursing clerk of the Treasury Department, for which he had given bond and taken the oath of office required by law (Revised Statutes, sec. 176), the Secretary of the Treasury addressed to him a communication of which the following is a copy:

"OFFICE OF THE SECRETARY,
"WASHINGTON, D. C., *November* 27, 1891.

"George A. Bartlett, disbursing clerk, Treasury Department, Washington, D. C.

"SIR: You are hereby appointed disbursing agent for such funds as may be advanced to you from time to time, on account of the appropriation for post-office, Washington, D. C.

"You will be entitled to such compensation for the services named as is provided by law, and the same rate of compensation will be allowed on all amounts disbursed by you since October 15, 1891, on account of the appropriation named.

"Disbursements will be made upon vouchers issued and properly certified by Thomas C. Steward, superintendent of construction, post-office, Washington, D. C.

"Respectfully, yours, O. L. SPAULDING,
"*Acting Secretary.*"

For the performance of the duties therein stated no additional bond or oath of office was required of or given by the claimant.

Under the several appropriation acts for the construction of the post-office building in the city of Washington it was made the duty of the Secretary of the Treasury to disburse the moneys appropriated therefor. (26 Stat. L., 413, 414; 27 Stat. L., 351, 573; 28 Stat. L., 373, 913; 29 Stat. L., 415; 30 Stat. L., 13.) And in the execution of the acts the Secretary appointed the claimant herein a disbursing agent to disburse the money appropriated therefor.

The claimant's contention is that he was employed by the Secre-

tary of the Treasury to do the specific thing named in the letter of appointment; that such appointment conferred no office upon him, it being a mere employment to disburse such funds as might be advanced to him on account of the Washington post-office; that the employment did not embrace the idea of duration or permanency, but began and ended with the construction of the building.

The question is, Under which of two statutes does the claimant's appointment, employment, or designation as disbursing agent fall? By Revised Statutes, section 3657, collectors of customs are required to act as disbursing agents for the payment of all moneys appropriated for the construction of public buildings within their respective districts, while by Revised Statutes, section 3658, the Secretary of the Treasury is authorized "where there is no collector at the place of location of any public works specified in the preceding section" to appoint a disbursing agent for the payment of all moneys appropriated for such purpose.

The letter of the Secretary is addressed to the claimant as "disbursing clerk, Treasury Department," and the language therein, "You are hereby appointed disbursing agent," would seem to indicate that the Secretary was intending to act under section 3658, thereby entitling the claimant to such compensation as the Secretary "may deem equitable and just," limited, however, by the act of March 3, 1875 (18 Stat. L., 402, 415), to three-eighths of 1 per centum of the amount disbursed. But that section is modified by the act of August 7, 1882 (22 Stat. L., 306), which provides that "any disbursing agent who has been or may be appointed to disburse any appropriation for any United States court-house and post-office, or other building or grounds, not located within the city of Washington, shall be entitled to the compensation allowed by law to collectors of customs for such amounts as have been or may be disbursed." As in the present case the building constructed was located in the city of Washington; the claimant is excepted from those entitled to "the compensation allowed by law to the collectors of customs" for such services.

The duties which the Secretary devolved upon the claimant were not only germane to his regular duties as disbursing clerk, but were identical therewith, and hence can not be considered as two distinct offices or employments having different duties to perform. At most the duties thus devolved upon the claimant were additional to those he was required to perform as disbursing clerk of the Treasury Department, for which his salary was fixed by the act of March 3, 1875 (18 Stat. L., 396), at $2,500 per annum.

7 It will be noted that under section 3658 the appointment of a disbursing agent can only be made "where there is no collector at the place of location of any public work specified" in section 3657, and such appointment, we think, implies that the agent so appointed shall give bond as an officer (United States *v.* Mouat, 124 U. S., 303, 307) and take the required oath of office before entering upon the discharge of his duties. (Revised Statutes, section 1756.)

Under Revised Statutes, section 255, "the Secretary of the Treasury may designate any officer of the United States, who has given bond for the faithful performance of his duties, to be a disbursing agent for the payment of all moneys appropriated for the construction of public buildings authorized by law within the district of such officer."

In the case of Bartlett *v.* The United States (25 C. Cls. R., 389, 398) wherein this same claimant as disbursing clerk was ordered by the Secretary of the Treasury to pay such vouchers presented, for public buildings throughout the country, as the Secretary might think best to be paid in Washington, the court said: "The claimant was precluded from appointment under section 255, because, not being attached to any district, the buildings for which his disbursements were made were not *within his district*, and he could not have been appointed under section 3658, by special designation in each case, to disburse part of the money appropriated, because there was a collector at the place of location of each of the several buildings, or a disbursing agent, other than the claimant, previously appointed 'for the payment of *all moneys* appropriated for the construction of any such public work.'"

If that ruling be correct, then it follows that in the present case the claimant could have been designated as disbursing agent under section 255, because the public building, for the payment of which the appropriation was to be disbursed, was located "within the district of such officer," *i. e.*, within the city of Washington, and though the letter of the Secretary of the Treasury appears upon its face to be a letter of appointment, yet, as at the date thereof the city of Washington was by Revised Statutes, section 2550, within the customs district of Georgetown, where a collector was provided for (sec. 2551), the claimant could not have been appointed under section 3658; or if appointed thereunder, because at that time there was "no collector at the place of location" of the public building to be constructed, *i. e.*, in the city of Washington, the claimant by virtue of said act of August 7, 1882, *supra*, granting compensation to disbursing agents "not located in the city of Washington," would not be entitled to recover the compensation allowed by law to collectors. Hence the act of February 11, 1895 (28 Stat. L., 650), constituting Georgetown a part of the city of Washington, and continuing the port of entry there under the latter name, is immaterial in this case. That being so, the letter of appointment could only operate in effect to designate the claimant as a disbursing agent under section 255, for which no compensation, additional to that of his regular salary, is provided.

Again, as the claimant did not hold two distinct offices, places, or employments, each with its own duties and compensation, he does not bring himself within the ruling in the case of The United States *v.* Saunders (120 U. S., 126, 129), wherein the court construes Revised Statutes, sections 1763, 1764, and 1765, the last of which sections provides that "no officer in any branch of the public service, or

any other person whose salary, pay, or emoluments, are fixed by law or regulations shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation."

In commenting on those two sections the court in that case said:

"We are of opinion that, taking these sections all together, the purpose of this legislation was to prevent a person holding an office or appointment, for which the law provides a definite compensation by way of salary or otherwise, which is intended to cover all the services which, as such officer, he may be called upon to render, from receiving extra compensation, additional allowances, or pay for other services which may be required of him either by act of Congress or by order of the head of his department, or in any other mode, added to or connected with the regular duties of the place which he holds; but that they have no application to the case of two distinct offices, places, or employments, each of which has its own duties and its own compensation, which offices may both
8 be held by one person at the same time. In the latter case he is in the eye of the law two officers, or holds two places or appointments, the functions of which are separate and distinct, and, according to all the decisions, he is in such case entitled to recover the two compensations. In the former case he performs the added duties under his appointment to a single place, and the statute has provided that he shall receive no additional compensation for that class of duties unless it is so provided by special legislation."

The latter clause of that quotation correctly describes the claimant's services, that is, "he performs the added duties under his appointment to a single place, and the statute has provided that he shall receive no additional compensation for that class of duties unless it is so provided by special legislation," and as there is no special legislation which authorizes additional compensation to the claimant for the services he performed as such disbursing agent he is not entitled to recover, and his petition must therefore be dismissed.

NOTT, Ch. J., concurring:

In 1891 the claimant was "disbursing clerk in the Treasury Department." On the 27th November, 1891, the Secretary of the Treasury appointed him "disbursing agent" on account of the appropriation for the Washington post-office, then about to be erected. There were two diverse statutory provisions then in force—one of which (Rev. Stat., sec. 255) authorized the Secretary of the Treasury to "*designate* any officer of the United States, who has given bonds for the faithful performance of his duties, to be disbursing agent for the payment of all moneys authorized for the construction of public buildings;" the other (sec. 3658) authorized the Secretary, in certain

cases, to "*appoint* a disbursing agent for the payment of all moneys appropriated for the construction of any such public work, with such compensation as he may deem equitable and just." The words of the Secretary were: "You are hereby *appointed disbursing agent* for such funds as may be advanced to you from time to time on account of the appropriation for post-office, Washington, D. C." "You will be entitled to such compensation for the services named as is provided by law." It is therefore manifest that the Secretary did not "designate" the claimant to act under the one section, and did "appoint" him, or intended to appoint him, under the other. The claimant not having been "designated" under section 255, it never became a part of his duty as a disbursing officer in the Treasury to disburse the moneys for the Washington post-office.

The Secretary of the Treasury is something more than an administrative officer. The Supreme Court has held again and again that the heads of the executive departments are charged with the duty of construing the laws which affect the business of their departments; and a clerk in a department may well lean upon the construction given to the statutes by one of the chief officers of state charged with the duty of construing the laws which relate to the business of his department.

Under this appointment the work of disbursing the funds appropriated for the Washington post-office went on for about nine years; and during these nine years the claimant disbursed $2,450,710.10. The work must have been considerable, but the responsibility was very great. If the claimant had committed an error of one dollar in these disbursements that argus-eyed impersonality known as "the accounting officers" would have detected it, and it would have been charged to him and deducted from his salary as disbursing officer. The work, moreover, was done in addition to the regular duties of his office as disbursing officer. That is to say, while he continued to do his ordinary regular work as disbursing clerk of the Treasury Department he was required for nine years to perform other work and to assume a very serious responsibility.

It is plain that the Secretary did not intend to cast this burden upon the claimant without remuneration, and conversely it may be supposed that if the Secretary had known that the service was to be a gratuity rendered to the Government, he would never have appointed him "disbursing agent" of this Washington post-office. Both parties understood that the work was to be in addition to the claimant's ordinary duties; both parties believed that for this additional work he would be compensated.

9 If the responsible managing officer of a private corporation had employed an employee to work over hours under such an agreement, and the corporation had received the benefit of such work, no one could entertain a doubt as to the right of the employee to recover either in *quantum meruit* or for the compensation which the managing officer had agreed to give him.

Nevertheless, the merciless doctrine of *ultra vires*, coupled with

the despotic rule that "while individuals are liable to the extent of the power they have apparently given to their agents, the Government is liable only to the extent of the power it has actually given to its officers," must, I regret to say, preclude the claimant from recovering.

To rightly construe section 255 of Revised Statutes we must go back to the *act 3d March*, 1869 (15 Stat. L., p. 301, 306), from which it is taken verbatim. When that act was passed the *act 23d August*, 1842 (5 Stat. L., p. 510, sec. 2), declared that no officer drawing a fixed salary should receive additional compensation for any service, unless it was authorized by law and a specific appropriation made to pay it. The two statutes, when read together, meant that the Secretary of the Treasury was authorized to require "any officer of the United States, who has given bonds for the faithful performance of his duties, to be disbursing agent for the payment of all moneys appropriated for the construction of public buildings authorized by law within the district of such officer" as an additional duty, and that the officer must discharge the duty without additional compensation. The claimant manifestly cannot recover as a disbursing officer of the Treasury Department. The resultant question is whether he can recover as a "disbursing agent," "appointed" by the Secretary of the Treasury under the other statute, section 3658.

In 1858 Congress instituted a new policy concerning the disbursements for public buildings, and enacted from time to time laws which should govern them. By the *act 12th June 1858* (11 Stat. L., pp. 319, 327, sec. 17), it was provided:

"*And be it further enacted*, That the collectors of the customs in the several collection districts be, and they are hereby and hereafter, required to act as disbursing agents for the payment of all moneys that are or may hereafter be appropriated for the construction of custom-houses, court-houses, post-offices, and marine hospitals, with such compensation, not exceeding one-quarter of one per cent. as the Secretary of the Treasury may deem equitable and just: *And provided further*, That where there is no collector at the place of location of any public work herein specified the superintendent of such public work shall act as disbursing agent without any additional compensation therefor, and all laws and parts of laws in conflict with the provisions of this section be, and the same are hereby, repealed."

Congress amended this act by the *act 28th July, 1868* (14 Stat. L., p. 341), which struck out the proviso and substituted the following:

"*And provided further*, That where there is no collector at the place of location of any public work herein specified the Secretary of the Treasury shall have power to appoint a disbursing agent for the payment of all moneys that are, or may be hereafter, appropriated for the construction of any such public work, with such compensation as he may deem equitable and just, and all laws and parts of laws in conflict with the provisions of this section be, and the same are hereby, repealed."

These provisions became sections 3657 and 3658 of the Revised Statutes. The sum and substance of them is that collectors of customs are required to act as disbursing agents for buildings erected in their districts, "with such compensation, not exceeding one-quarter of 1 per cent., as the Secretary of the Treasury may deem equitable and just," and that "where there is no collector" the Secretary may appoint a disbursing agent, with such compensation as he may deem equitable and just. It seems manifest, therefore, that the legislative intent is that where a building is to be erected in a district in which there is a collector of customs, he should be required to act, and he alone; and, conversely, where the building is to be erected in a district where there is no collector, and there alone, the Secretary is authorized to appoint a disbursing agent.

This legislative intent has not been changed by subsequent legislation. By the *act March 3*, 1869 (15 Stat. L., p. 311, 312) the compensation of officers and agents was cut down to one-eighth of 1 per cent. By the *act 3d March*, 1875 (18 Stat. L., p. 415) the limit of compensation was raised to three-eighths of 1 per cent. By the *act 7th August*, 1882 (22 Stat. L., p. 306) disbursing agents (doubtless referring to those in districts where there is no collector, provided they are "not located in the city of Washington"), were declared to be "entitled to the compensation allowed by law to collectors of customs." The words of the statute are as follows:

"* * * And any disbursing agent who has been or may be appointed to disburse any appropriation for any United States court-house and post-office, or other building or grounds, not located within the city of Washington, shall be entitled to the compensation allowed by law to collectors of customs for such amounts as have been or may be disbursed."

This manifestly relates to compensation and not to the authority of the Secretary of the Treasury to appoint agents. That authority was given by previous legislation and remains unchanged.

The words of this statute just quoted—"not located within the city of Washington"—seem to imply that, in the belief of Congress, there was no collector in the city, or rather that the city of Washington was not in the district of any collector. If that were the case, the effect of this statute would be simply that the agent appointed would not be entitled to the same compensation allowed by law to collectors of customs, but under previous legislation would be entitled to such compensation as the Secretary of the Treasury might see fit to give him. In other words, the act of August 7, 1882, put disbursing agents in districts where there is no collector on the same footing as collectors of customs, excepting those in the city of Washington.

The question in the suit then narrows down simply to this: Was there a collector whom the law intended should be the disbursing agent of the post-office building in the city of Washington? If there was not the claimant is entitled to recover under section 3658 "such compensation as he (the Secretary) may deem equitable and

just." If there was the Secretary of the Treasury was without power to make the appointment, and should have designated a collector of customs to act as disbursing agent.

The Revised Statutes (secs. 2546, 2548, 2550, 2551) provide that "There shall be in the State of Delaware one collection district;" that "There shall be in the State of Maryland three collection districts;" that "There shall be in the District of Columbia one collection district, as follows:

"The district of Georgetown; to comprise all the waters and shores of the Potomac river within the State of Maryland and the District of Columbia from Pomonkey creek to the head of the navigable waters of that river, in which Georgetown shall be the port of entry."

"There shall be in the district of Georgetown a collector."

It seems, then, plain that the city of Washington is within the "district of Georgetown," and that the district of Georgetown has a collector. And it consequently seems plain that the district of Georgetown is not a district where the "Secretary of the Treasury shall have power to appoint a disbursing agent."

11 VI.—*Motion of Claimant to Amend Findings of Fact and Order Overruling Same.*

Comes now plaintiff, by his attorney, J. M. Vale, and moves the court to amend the findings of fact herein by finding, in addition to the facts heretofore found as follows:

IV.

The duties of claimant under and by virtue of his appointment as disbursing agent on account of appropriation for the post office at Washington, in the District of Columbia, were separate and distinct from his duties as disbursing clerk of the Treasury Department, and were so recognized by the Secretary of the Treasury throughout the period covered by his employment as such disbursing agent.

Filed March 26, 1904.

J. M. VALE,
Attorney for Claimant.

Order.

Overruled: Findings show claimant a disbursing clerk; also shows his appointment by Secretary as a disbursing agent, and his performance of the duties.

April 6, 1904.

BY THE COURT.

12 VII.—*Judgment of the Court.*

GEORGE A. BARTLETT
vs.
THE UNITED STATES. } No. 23009.

At a Court of Claims held on the 21st day of March 1904 judgment was ordered to be entered as follows:

The court upon due consideration of the premises find for the defendants and do order, adjudge and decree that the petition of the claimant George A. Bartlett be and the same is hereby dismissed.

BY THE COURT.

13 VIII.—*Application for and Allowance of Appeal.*

Comes now the claimant, George A. Bartlett, by his attorney J. M. Vale, and appeals from the judgment rendered in this cause on the 21st day of March 1904 in favor of the defendants, and prays for the allowance of appeal from said judgment to the Supreme Court of the United States.

J. M. VALE,
Attorney for Claimant.

Filed April 25, 1904.

Ordered that this appeal be allowed as prayed for.

BY THE COURT.

April 25, 1904.

14 In the Court of Claims.

GEORGE A. BARTLETT
vs.
THE UNITED STATES. } No. 23009.

I, John Randolph assistant clerk of the Court of Claims certify that the foregoing are true transcripts of the pleadings in the above-entitled cause—of the findings of fact and conclusion of law filed by the court, of the opinion of the court and the concurring opinion—of motion to amend findings and order overruling same, of the judgment of the court dismissing petition—of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims. In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 16th day of May, A. D. 1904.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 19,357. Court of Claims. Term No. 259. George A. Bartlett, appellant, *vs.* The United States. Filed May 16", 1904. File No. 19,357.

Supreme Court of the United States.

OCTOBER TERM, 1904.

GEORGE A. BARTLETT,
APPELLANT,
v.
THE UNITED STATES.

No. 259.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT OF THE CASE.

Appellant, while disbursing clerk of the Treasury Department, duly appointed, qualified and bonded as such, was employed by the Secretary of the Treasury under a certain letter of appointment dated November 27, 1891 (Record, p. 4), as disbursing agent for such funds as might be advanced to him from time to time on account of appropriation for Post Office, Washington, D. C. The duty of disbursing the indicated funds was by law imposed upon the Secretary of the Treasury; appellant was employed by the Secretary to make the indicated disbursements in the clear understanding that he would be compensated therefor; he gave no bond under said employment as disbursing agent for the Post Office, Washington, D. C., and took no oath of office as such; the work was specific and did not

embrace the idea of duration or permanency, but began and ended with the construction of the Washington Post Office building. Appellant disbursed two millions four hundred and fifty thousand seven hundred and ten 10-100 dollars ($2,457,710.10), as such disbursing agent, not as disbursing clerk of the Treasury Department, which disbursement was reasonably worth three-eighths of one per centum upon the sum so dispersed, or nine thousand one hundred and ninety 20-100 dollars ($9,190.20) for which sum suit was brought in the Court of Claims.

Assignment of Errors.

Appellant assigns the following errors of the Court below, to wit:

1st. In holding that statutory authority is necessary to give validity to the contract between the United States and appellant.

2d. In failing to hold that the contract between the United States and Appellant is enforceable in the courts.

3d. In holding that the Secretary of the Treasury required appellant to perform the duties of disbursing agent for the Post Office, Washington, D. C.

4th. In holding that appellant's employment as disbursing agent for the Post Office, Washington, D. C., devolved upon the appellant duties germain to his regular duties as disbursing clerk of the Treasury Department and identical therewith.

5th. In failing to hold that the office of disbursing clerk of the Treasury Department is distinct in its duties from the employment of appellant as disbursing agent for Post Office, Washington, D. C., under the letter of the Secretary of the Treasury dated November 27, 1891 (Record, p. 4).

6th. In holding that the law cast upon the collector of the port of Georgetown, D. C., the duty of disbursing agent for the Post Office, Washington, D. C.

7th. In failing to render judgment in favor of appellant as prayed.

Brief of Argument.

No legislative authorization was required to empower the Secretary of the Treasury to contract with appellant as set out in findings of fact 2 and 3 (Record, pp. 4 and 5); such power is incident to the general sovereignty of the United States.

Dugan *v.* The United States, 3 Wheaton, 172.
United States *v.* Tingey, 5 Peters, 114.
United States *v.* Bradley, 10 Peters, 343.
Cotton *v.* United States, 11 Howard, 229.
United States *v.* Maunce *et al.*
2 Brock. 96; opinion by Ch. J. Marshall.

The duties of appellant as disbursing clerk of the Treasury Department are such as the Secretary of the Treasury may prescribe. They are not otherwise defined by law. The Secretary of the Treasury could not prescribe the duties of disbursing agent for the Post Office, Washington, D. C., as part of or additional to the duties of appellant as disbursing clerk of the Treasury Department. On the contrary the Secretary separates the former from the latter by the terms of appellant's appointment as disbursing agent for Post Office, Washington, D. C.

Revised Statutes, U. S., Sections 173, 174 and 176.

The City of Washington, in the District of Columbia, the place of the location of the public work, was not the place

of the location of the port of Georgetown, in the District of Columbia, for the purpose of making disbursements for the Post Office building at the City of Washington. No collector of customs was located at the City of Washington, the place of the public work.

Sections 2550, 2551 and 3658, Revised Statutes, U. S.
Act of Congress approved February 11, 1895, 28th Stats. 650.

Appellant is entitled to recover under the authority of:
Converse *v.* United States, 21 Howard, 463.
United States *v.* Brindle, 110 U. S. 688.
United States *v.* Saunders, 120 U. S. 126.

Argument.

The appointment of appellant by the Secretary of the Treasury under date of November 27, 1891 (Record, p. 4), is not an appointment to an office; appellant gave no bond and his duties were not continuing; they began and ended with the construction of the indicated building; a mere employment was conferred upon appellant under and by virtue of the contract evidenced by the letter of appointment, the acceptance thereof and performance of service thereunder. Compensation to appellant was an essential element in the transaction. Appellant has performed his part of the contract and this suit is brought to enforce performance on the part of the Government, for neither may depart from the terms agreed upon without the consent of the other. The law imposed the duty of making the disbursement upon the Secretary of the Treasury, and it is contended the Secretary acted within his authority in employing appellant to perform the service which the Secre-

tary could not perform with his own hand, and in attaching to such performance the incident of compensation. Even if the Secretary of the Treasury had no power to pay compensation as agreed, his contract is enforceable in the courts. The power of the Secretary to contract in this case is a power incident to his office. The law imposes no limitation upon the power of the Secretary to contract which ought to preclude claimant from recovering. His power to pay need not be considered. That question is not in this case.

Appellant was not bound to accept the appointment of disbursing agent for the Post Office, Washington, D. C. He was not required by the Secretary of the Treasury to perform the service; on the contrary, he was induced, in the expectation of compensation, to perform the service, and he assumed the grave responsibility of the disbursement of this very large sum of money as an employment independent of his duties as disbursing clerk of the Treasury Department. The duties of disbursing clerk of the Treasury are prescribed by the Secretary of the Treasury; they are not defined by law; they are subject to the order of the Secretary or of the Chief Clerk of the Department acting under the authority of the head of the Department; had the Secretary of the Treasury required appellant to disburse the money in payment for the construction of the Washington Post Office as part of his duties as disbursing clerk, that would raise a different question; but the Secretary of the Treasury did nothing of that kind; on the contrary, he appointed appellant specifically to the employment of an agent separate and distinct from his employment as disbursing clerk. It is submitted the Secretary's letter of appointment can properly have no other interpretation; as such disbursing agent appellant did not perform the

duties of any other office; he did not discharge the duties which belong to any other officer or clerk; the services were not "extra" or additional to his ordinary duties as disbursing clerk; the payment promised was not "additional" pay or an "extra allowance," but was compensation for the performance of a separate and distinct duty from that of disbursing clerk of the Treasury.

But it is urged that statutory authority for the employment of appellant is found in Section 3658 of the Revised Statutes of the United States, which provides as follows:

> "Where there is no collector at the place of the location of any public work specified in the preceding section the Secretary of the Treasury may appoint a disbursing agent for the payment of all moneys appropriated for the construction of any such public work, with such compensation as he may deem equitable and just."

The "preceding section" referred to in the section quoted authorizes collectors of customs to act as disbursing agents for the construction of post offices and certain other public buildings.

The City of Washington, in the District of Columbia, which is not a port of entry, is not the place of the location of the collector for the port of Georgetown; the City of Washington, the location of the place of the public work for which disbursements were made by appellant, is a place different from the port of Georgetown. The law defines the collection district wherein Georgetown is the port of entry as follows:

> SEC. 2550 (Rev. Stats.). There shall be in the District of Columbia one collection district as follows: The district of Georgetown; to comprise all the waters

and shores of the Potomac river within the State of Maryland and the District of Columbia from Pomonkey creek to the head of the navigable waters of that river; in which Georgetown shall be the port of entry.

SEC. 2551. There shall be in the district of Georgetown a collector.

The Post Office, at Washington, D. C., is neither located at Georgetown, nor on the waters or shores of the Potomac river; the place of its location is the City of Washington, which was, in fact, at the time of the employment of appellant for which he seeks recovery, a separate municipality from Georgetown, and so continued down to February 11, 1895 (28th Stats. 650).

Respectfully submitted.

J. M. VALE,
For Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

GEORGE A. BARTLETT, APPELLANT,
v.
THE UNITED STATES. } No. 259.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

While holding the office of disbursing clerk of the Treasury Department, at a salary fixed by law at $2,500 per annum, for which he had given bond and taken the oath of office, as required by statute, the Secretary of the Treasury, on the date named below, addressed to appellant the following communication:

OFFICE OF THE SECRETARY,
Washington, D. C., November 27, 1891.

GEORGE A. BARTLETT,
Disbursing Clerk, Treasury Department,
Washington, D. C.

SIR: You are hereby appointed disbursing agent for such funds as may be advanced to you from time to time on account of the appropriation for post-office, Washington, D. C.

You will be entitled to such compensation for the services named as is provided by law, and the same rate of compensation will be allowed on all amounts disbursed by you since October 15, 1891, on account of the appropriation named.

Disbursements will be made upon vouchers issued and properly certified by Thomas C. Steward, superintendent of construction, post-office, Washington, D. C.

Respectfully, yours,

O. L. SPAULDING,
Acting Secretary.

Pursuant to the above designation, appellant disbursed the moneys appropriated by Congress for the erection of the post-office at Washington, D. C., during a period beginning October 15, 1891, and ending April 4, 1900, the aggregate of such disbursements amounting to $2,450,710.10.

For the performance of these duties no additional bond or oath of office was required.

Upon the completion thereof a demand was presented to the proper accounting officers of the Treasury Department by appellant for an allowance of $9,190.20 as commissions at the rate of three-eighths of 1 per cent on the total amount thus disbursed, which was disallowed by the Auditor, and upon appeal was rejected by the Comptroller of the Treasury in an opinion dated June 30, 1902. (8 Decisions, Comp. Treasury, 901.) Thereupon appellant filed a petition in the Court of Claims seeking to recover the sum of

$9,190.20, as claimed, on account of the funds so disbursed upon the ground that the letter of the Secretary of the Treasury, of November 27, 1891, constituted an appointment under the authority of section 3658, Revised Statutes of the United States, and that by reason thereof he was entitled to the compensation therein provided.

The Court of Claims, in an opinion by Peelle, J., held that the appointment, employment, or designation of appellant by the Secretary did not come within the section named; that the other provisions of the statutes relating thereto did not authorize the payment of compensation for such service, and that the duty assigned being identical with appellant's other duties as disbursing clerk of the Department he was not entitled to recover in the absence of special legislation to that effect, and dismissed the petition. Nott, C. J., in a separate opinion, concurred in the result. This appeal is taken from the judgment of dismissal.

ARGUMENT.

The sole question raised by this appeal is: What authority had the Secretary of the Treasury to appoint the claimant to the duties specified in the letter of November 27, 1891, and to what compensation is he entitled for the performance thereof?

In the brief of counsel for appellant, it is contended that the letter of appointment, the acceptance and performance of the duties specified, constitute a contract between appellant and the United States enforceable in the courts, for which no statutory authority was

necessary, the employment being within the power of the Secretary of the Treasury, the head of an executive department, as an incident of general sovereignty, and a number of decisions to sustain this contention *are cited*. This question, however, does not arise in the case. A reference to the statutes hereinafter cited will show that Congress has adopted a most comprehensive system for the disbursement of appropriations for the erection of all public buildings, including the compensation of public officers appointed or designated for such service. The court therefore is not concerned in this case with the extent of the power vested in the Secretary of the Treasury, Congress by its enactments, having removed this subject from such consideration.

The provisions of the Revised Statutes relating to the appointment, designation, and compensation of officers for the disbursement of appropriations for the erection of public buildings, and which, it is insisted by the United States, govern the case, are as follows:

> SEC. 3657. The collectors of customs in the several collection districts are required to act as disbursing agents for the payment of all moneys that are or may hereafter be appropriated for the construction of custom-houses, court-houses, post-offices, and marine hospitals; with such compensation, not exceeding one-quarter of one per centum, as the Secretary of the Treasury may deem equitable and just.
>
> SEC. 3658. Where there is no collector at the place of location of any public work specified in the preceding section, the Secretary of the Treasury may appoint a disbursing agent for

> the payment of all moneys appropriated for the construction of any such public work, with such compensation as he may deem equitable and just.
>
> SEC 255. The Secretary of the Treasury may designate any officer of the United States, who has given bonds for the faithful performance of his duties, to be disbursing agent for the payment of all moneys appropriated for the construction of public buildings authorized by law within the district of such officer.

The act of August 7, 1882 (22 Stat., 306), provides:

> And any disbursing agent who has been or may be appointed to disburse any appropriation for any United States court-house and post-office, or other building or grounds, not located within the city of Washington, shall be entitled to the compensation allowed by law to collectors of customs for such amounts as have been or may be disbursed.

The appellant contends that statutory authority for this employment is contained in section 3658, and that he is entitled to the compensation claimed for the reason that there was no collector of customs at the city of Washington, the place of the location of the public work.

But it will be observed that section 3657 requires collectors of customs to act as disbursing agents for erection of the public buildings therein named, and that section 3658 authorizes the appointment of a disbursing agent by the Secretary only "*where there is no collector at the place of location of any public work specified in the*

preceding section." It is manifest, therefore, that if there was a collector of customs provided "at the place of location" of the Washington City Post Office the appointment of Mr. Bartlett was not authorized by section 3658, and that he is not entitled to compensation thereunder.

The Revised Statutes provide:

> SEC. 2550. There shall be in the District of Columbia one collection district, as follows:
>
> The district of Georgetown; to comprise all the waters and shores of the Potomac River within the State of Maryland and the District of Columbia from Pomonkey Creek to the head of the navigable waters of that river; in which Georgetown shall be the port of entry.
>
> SEC. 2551. There shall be in the district of Georgetown a collector.

The post-office building at the city of Washington is situated in the District of Columbia, for which one collection district is provided, viz, "the district of Georgetown," which clearly embraces the "place of location" of said building. The fact that at the time appellant assumed the disbursements of the funds there were two separate municipalities in the collection district, one of which was subsequently abolished and its territory made a part of the other, necessitating a change in the name of the port of entry (28 Stats., p. 650), does not affect the question. They were both included within the specified boundaries of the district, which boundaries are described in the same manner as the collection districts in several of the States embrac-

ing different municipalities. (Sections 2546–2548, Rev. Stats., U. S.)

It being clear that the appellant could not have been appointed for the purpose named in the letter of November 27, 1891, under section 3658 of the Revised Statutes, as alleged in the petition and in the brief, it follows that his appointment was made by the Secretary under section 255 of the Revised Statutes, which carries with it no compensation additional to his regular salary, for services performed in accordance therewith. He can not avail himself of the provisions of the act of August 7, 1882 (22 Stats., p. 306), because the disbursements he made were for a building located in the city of Washington which by express terms is excluded from the operation of the act (*Bartlett* v. *United States*, 25 C. Cls. R., 389), and there is no other provision of law authorizing payment to him for such services.

Indeed, the policy of Congress upon the allowance of additional pay or compensation in any form whatever to public officers whose salaries are fixed by law has been most carefully expressed to the contrary in the following sections of the Revised Statutes:

> SEC. 1760. No money shall be paid from the Treasury to any person acting or assuming to act as an officer, civil, military, or naval, as salary in any office when the office is not authorized by some previously existing law unless such office is subsequently sanctioned by law.
>
> SEC. 1763. No person who holds an office the salary or annual compensation attached to

which amounts to the sum of two thousand five hundred dollars shall receive compensation for discharging the duties of any other office, unless expressly authorized by law.

SEC. 1764. No allowance or compensation shall be made to any officer or clerk by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance or compensation shall be made for any extra services whatever which any officer or clerk may be required to perform, unless expressly authorized by law.

SEC. 1765. No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

This court fully considered the legislation embraced in the last three sections in the case of *United States* v. *Saunders* (120 U. S., pp. 126–129) and stated its opinion to be that, taking these sections together, the purpose of this legislation was to prevent a person holding an office or appointment for which the law provides a definite compensation, by way of salary or otherwise, which is intended to cover all the services which as such officer he may be called upon to render, from receiving extra compensation, additional allowances, or pay for other services which may be required of him

either by act of Congress or by order of the head of a Department, or in any other manner, added to or connected with the regular duties of the place which he holds.

This construction applies to appellant's services in this case. The act of Congress making appropriations for the construction of this post-office required the Secretary of the Treasury to disburse the money and did not contain any provision whatever for payment of compensation for such service. (26 Stat. L., 174, 413, 414; 27 Stat. L., 351, 573; 28 Stat. L., 373, 913; 29 Stat. L., 415; 30 Stat. L., 13.)

No office or position of disbursing agent was created by those acts. In the execution thereof and in conformity with the duty thus conferred, the Secretary of the Treasury appointed the disbursing clerk of the Treasury Department to make these disbursements.

At the time these services were rendered, for which extra pay is claimed, the appellant was an officer in the public service, and, as such, was receiving pay or salary as fixed by law. He was the proper officer and the one naturally to be selected for this duty, which, as stated by the court below, "were not only germane to his regular duties as disbursing clerk, but were identical therewith, and hence [they] can not be considered as two distinct offices or employments having different duties to perform." (Rec., p. 6.)

Appellant performed the additional duties thus required under his appointment to a single office, and there is no law authorizing compensation for such

services and no appropriation which "explicitly states that it is for such additional pay, extra allowance, or compensation." The letter of the Secretary to appellant, stating that he would be entitled to "such compensation for the services named as is provided by law," conferred no additional rights in the absence of special legislation.

It is respectfully insisted that the judgment of the Court of Claims dismissing the petition herein should be affirmed.

LOUIS A. PRADT,
Assistant Attorney-General.

FREDERICK DEC. FAUST,
Special Attorney.

O

Supreme Court of the United States.

No. 259.—October Term, 1904.

George A. Bartlett, Appellant,
vs.
The United States.
} Appeal from the Court of Claims.

[March 13, 1905.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an appeal from a judgment of the Court of Claims rejecting the claim of the appellant. C. Cl. R. . The claimant while a disbursing clerk of the Treasury Department received a letter from the Secretary of the Treasury, as follows: "George A. Bartlett, disbursing clerk, Treasury Department, Washington, D. C. Sir: You are hereby appointed disbursing agent for such funds as may be advanced to you from time to time on account of the appropriation for post-office, Washington, D. C. You will be entitled to such compensation for the services named as is provided by law, and the same rate of compensation will be allowed on all amounts disbursed by you since October 15, 1891, on account of the appropriation named." Directions followed.

The claimant gave no new bond and took no additional oath of office. He proceeded to disburse nearly two and a half millions of dollars and claims three-eighths of one per cent upon the sum disbursed.

The claimant puts his right to compensation on two grounds, the general powers of the Secretary of the Treasury apart from statute, and Rev. Stats. § 3658. As to the former it is enough to say that whatever power the Secretary might have in the absence of legislation, Congress has dealt with the subject so fully that it is plain that we must look to the statutes alone. Rev. Stats. §§ 1760–1765, 3657, 3658. 255. Act of August 7, 1882, c. 433; 22 Stat. 306. Looking to the statutes, the claimant relies on Rev. Stats. § 3658: "When there is no collector at the place of location of any public work specified in the preceding section, [which section specifies post-offices,] the Secretary of the Treasury may appoint a disbursing agent for the payment of all moneys appropriated for the construction of any such public work, with such compensation as he may deem equitable and just." It is urged that there is no collector at Washington, the place of location of the public work concerned.

The statutes as to the collector for Washington are as follows: Rev. Stats. § 2550. "There shall be in the District of Columbia one collection-"district, as follows: The district of Georgetown; to comprise all the "waters and shores of the Potomac River within the State of Maryland

" and the District of Columbia from Pomonkey Creek to the head of the " navigable waters of that river; in which Georgetown shall be the port " of entry." § 2551. " There shall be in the district of Georgetown a collector." It appears from § 2550 that the collection district of Georgetown is more extensive than the city of Georgetown. And this is not changed by the later statute making Georgetown a part of Washington. Act of February 11, 1895, c. 79, 28 Stat. 650. We do not perceive on what ground it is denied that the Washington post office is within this district. The words, " shores of the Potomac River," seem to us broad enough to include the whole of a city on those shores and within the other limits named. " Waters and shores " is the usual phrase in Rev. Stats. Title 34, c. 1, §§ 2517–2607. The words " in which " assume that Georgetown is embraced within the district. If within the district it is so simply because it is on the shores as that word is used in § 2550, and if Georgetown is within it Washington is in it also, on the same ground. The same form of expression and the same assumption constantly recur in other sections. To show still further that collection districts run inland and are not limited to the mathematical line which bounds the water, it may be observed that, while " waters and shores " is the most common expression, a district frequently is declared to include towns; e. g. § 2517, Seventh, Thirteenth; § 2522; § 2531, First, Second; § 2533, First. It may include lands, § 2519; or embrace a county § 2517, First, Sixth; or even a State, § 2522. If Washington is within the collection-district, then there was a collector at the place of location of the Washington post office, see § 3657, and the authority of the Secretary to appoint a disbursing agent under § 3658 was excluded by its very words.

The claimant does not contend that his case gets any appreciable help from the act of August 7, 1882, c. 433, 22 Stat. 306. That gives the compensation allowed by law to collectors of customs to disbursing agents appointed to disburse any appropriation for any United States post office or other buildings, " not located within the city of Washington." No other statute is relied upon. No doubt the Secretary was under the impression, when the letter was written, that he was making an appointment which would entitle the claimant to distinct compensation for new work and responsibility. He did not regard the claimant as designated to be disbursing agent within the claimant's district under Rev. Stat. § 255, and therefore as not entitled to any additional pay. Rev. Stat. §§ 1764, 1765. But we do not see how the case can be put any higher. It is agreed that the claimant was not appointed to a new office by the Secretary's letter. Therefore no help is to be got from *United States* v. *Saunders*, 120 U. S. 126, 129. The case is a hard one, but we are of opinion that the decision of the Court of Claims was right.

Judgment affirmed.